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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ANLEX ROCK & MINERALS, INC.,	
Plaintiff and Respondent,	E069856
v.	(Super.Ct.No. CIVBS1100529)
BRUBAKER-MANN, INC.,	OPINION
Defendant and Appellant.	

APPEAL from the Superior Court of San Bernardino County. Pamela P. King, Judge. Affirmed as modified.

Elbert W. Muncy, Jr. for Defendant and Appellant.

Stanley W. Hodge; and Law Offices of Valerie Ross and Valerie Ross for Plaintiff and Respondent.

I. INTRODUCTION

This is the second appeal in litigation between two mining companies, plaintiff and respondent, Anlex Rock & Minerals, Inc. (Anlex), and defendant and appellant,

Brubaker-Mann, Inc. (Brubaker-Mann). To access its mining claim, Anlex sought an easement over land owned by Brubaker-Mann. After a bench trial, the court ruled that there was a public easement across Brubaker-Mann's property created by an implied-in-fact dedication, and it entered judgment for Anlex. In the first appeal, we reversed the judgment for lack of substantial evidence to support an implied-in-fact dedication of the relevant roadway. (*Anlex Rock & Minerals, Inc. v. Brubaker-Mann, Inc.* (Apr. 6, 2017, E065217) [nonpub. opn.] (*Anlex I*), at p. 2.) We remanded for the trial court to rule on Anlex's remaining causes of action to establish a private easement.[1] (*Anlex I*, *supra*, E065217 [at pp. 2-3].)

The court did so, and Brubaker-Mann again appeals from a judgment for Anlex. The court ruled on remand that Anlex had an equitable roadway easement over Brubaker-Mann's property. To grant an equitable easement, "the hardship to the party seeking the easement" must be "greatly disproportionate to the hardship caused to the servient owner over whose property the easement is granted." (*Hinrichs v. Melton* (2017) 11 Cal.App.5th 516, 522 (*Hinrichs*).) Brubaker-Mann primarily contends that the record lacks evidence of a greatly disproportionate hardship to Anlex. We disagree and conclude that the court did not abuse its discretion in granting the equitable easement.

[1] The clerk's transcript in this matter includes our nonpublished opinion in *Anlex I*, but it contains only the odd-numbered pages of the opinion. On our own motion, we take judicial notice of the entirety of our *Anlex I* opinion. (Evid. Code, § 452, subd. (d).)

Alternatively, Brubaker-Mann contends that we should remand for the court to (1) order Anlex to pay half the costs of maintaining the relevant roadway, and (2) impose restrictions on Anlex's use of the roadway. We see no need for remand on these issues. Brubaker-Mann has essentially waived the issue of restrictions on Anlex's use by failing to support its contention with anything other than conclusory assertions. As to maintenance costs, Anlex has indicated that it is willing to share those costs with Brubaker-Mann, and the law supports such compensation. We therefore modify the judgment to provide for the sharing of maintenance costs and, as modified, affirm.

II. FACTS AND PROCEDURE

A. *The Bench Trial*

Anlex's second amended complaint alleged three causes of action to quiet title to an easement across Brubaker-Mann's land—the first based on an implied dedication to the public, the second based on an easement by prescription, and the third based on an equitable easement. The second amended complaint also sought declaratory and injunctive relief supporting the creation of an easement.

As discussed, after the bench trial, the court ruled that Anlex had the right to cross Brubaker-Mann's property pursuant to a common law dedication—that is, there was an implied-in-fact dedication to the public of a roadway, and Anlex was a member of the public. The court did not rule on Anlex's causes of action for a prescriptive easement and an equitable easement.

When we remanded the case in *Anlex I*, we directed the court to rule on the remaining causes of action based on the evidence adduced at trial. (*Anlex I, supra*, E065217 [at pp. 28-29, 31].) The bench trial occurred over the course of several days in 2015. We summarize the pertinent evidence in the following subparts.

1. The Relevant Parcels of Land and the Road

We deal here with three contiguous sections of land, which we refer to as Sections 1, 2, and 3. Each section of land is approximately one mile wide from east to west. Anlex has a mining claim in the middle section, Section 2. Section 2 is bordered on the east by Section 1 and on the west by Section 3. A dirt road runs east and west through all three sections (the Road), and all are near the Fort Irwin Road exit off Interstate 15. The easement Anlex sought would allow it to use the Road across Section 1 and thereby access its mining claim in Section 2. Anlex alleged that, without the easement, it would have "no ready access to state highway routes" to transport the products of its mining claim.

Ownership of Section 1: The federal government originally owned Section 1 and transferred it to private hands in 1906. In the 1950's, different owners took possession of the east and west halves of the section, which we refer to as Parcels 03 and 09. Parcel 03 makes up the east half of Section 1, and Parcel 09 makes up the west half of Section 1.[2] In 1964, Brubaker-Mann acquired title to Parcel 09. In 1966, it granted a nonexclusive

[2] Throughout this litigation, the parties and the court have consistently referred to the land at issue using this same nomenclature (Sections 1, 2, and 3, and Parcels 03 and 09).

easement across Parcel 09 to Howard M. Peterson (and his heirs and assigns). Brubaker-Mann acquired title to Parcel 03 in 1987.

Ownership of Section 2: The federal government owns Section 2. The government granted a patent to mine the land. Before 1989, Peterson owned this mining claim. The mining claim passed from Peterson through a series of owners until 1998, when a principal in Anlex acquired the claim, and he transferred the claim to Anlex in March 1999. Anlex did not engage in mining activity at that time. It transferred the mining claim to Rock Yard-Tri, Inc. (Rock Yard) in August 2008. Rock Yard transferred the mining claim back to Anlex in October 2009, after Rock Yard defaulted on its obligations to Anlex.

Anlex has owned the mining claim since October 2009. While Anlex does not own the land in Section 2, it has a possessory interest in the land pursuant to the mining claim.

Ownership of Section 3: The federal government owned Section 3 until December 1999, when it sold the land to a private party. Since 2005, Lansing Industries Profit Sharing Plan (Lansing) has owned Section 3.

2. Access to the Road in Section 1 (Brubaker-Mann's Property)

Before Brubaker-Mann owned Parcel 03, it used the Road through that parcel to access its quarries in Parcel 09. The prior owner of Parcel 03 gave Brubaker-Mann permission to cross the Road there. Julie Clemmer is Brubaker-Mann's president and started working with the company in 1978. She observed Peterson using the Road to

access his quarries. She also knew that another of Anlex's predecessors, Calico Rock, used the Road across Section 1. Calico Rock owned the Anlex mining claim at various times from 1989 to 1998.

Around 1993, after Brubaker-Mann acquired Parcel 03, it erected a gate on Parcel 03 to help control traffic and access to the Road. There was an increase in trash being dumped on the property around this time, which was when the county had started to impose dump fees. Brubaker-Mann's property was a convenient location to dump trash because it was right off the highway. The trash was a problem because it mixed with the rock in the quarries and contaminated Brubaker-Mann's product, and the company also had to pay to dispose of it. Someone also dumped a body on the property around this time. In addition, people were stealing and vandalizing Brubaker-Mann's equipment. The company also had to control certain conditions on the Road to comply with environmental regulations. For instance, it had to train its drivers to travel at 15 miles per hour or less and to alert the company of dust problems, so that it could water the Road, if necessary.

It was not unusual for the gate to be open during business hours when employees were hauling product out of the property, and people continued to trespass on the Road even after Brubaker-Mann erected the gate. At various times, Brubaker-Mann had also expressly permitted others to use the Road. The county had Brubaker-Mann's permission to access the Road and had a key to the gate. The Whittier Gem and Mineral Society and Jesse Collins had mining claims on the other side of Brubaker-Mann's property, and it

had permitted them to use the Road to access their claims. Brubaker-Mann had also permitted Calico Rock to use the Road.

In 2000, Clemmer offered Anlex's agent, John Heter, permission to use the Road, subject to certain conditions. The conditions included sharing responsibility for maintaining the Road; naming Brubaker-Mann as an additional insured for all vehicles and equipment crossing the Road; and using the Road only between 7:30 a.m. and 3:30 p.m., Monday through Friday. Heter thanked Clemmer for providing permission, but she did not hear anything more from him after that. Between that offer in 2000 and 2008, Clemmer had no further contact with Anlex, and she did not observe any mining activity at Anlex's site.

In 2008, when Anlex transferred its mining claim to Rock Yard for a short period, Clemmer offered Rock Yard access to the Road, subject to essentially the same conditions that she had offered to Heter. Rock Yard declined the offer and instead filed suit against Brubaker-Mann.

In 2010, Brubaker-Mann offered Anlex a written license agreement to use the Road, but Anlex did not accept it. The conditions of the license agreement were similar to but more restrictive than those offered to Heter and Rock Yard. Brubaker-Mann wanted Anlex to pay half the maintenance costs of the Road. It also wanted to restrict Anlex's use of the Road to certain business hours and to be named as an additional insured on Anlex's insurance policy. But the license agreement did not extend to Anlex's customers or to one particular Anlex associate whom Clemmer felt was "unprofessional

in the extreme." The agreement permitted both parties to terminate it without cause; Brubaker-Mann could terminate it with 30 days' notice.

Clemmer did not object to Anlex using the Road to cross Parcel 09 because it had an easement for that, by virtue of the express easement granted to Peterson in 1966. She only objected to Anlex using the Road across Parcel 03.

3. Access to the Road in Section 3 (Lansing's Property)

There is another way to access Anlex's mining claim in Section 2, aside from traveling west through Brubaker-Mann's property in Section 1—one could take the Road east through Lansing's property in Section 3. Adam Han is the vice-president of Anlex. According to Han, in 2010, Anlex asked for Lansing's permission to use the Road in Section 3. Lansing did not grant permission.

Anlex's expert witness on rights-of-way and easements, Paul Jacobs, opined that a parcel owned by the federal government cannot legally be landlocked. His understanding was that if the federal government sold a piece of its property and thereby caused one of its own parcels to be landlocked, the government "usually" reserved a right to access its landlocked property. Jacobs further opined that, assuming the government once owned both Section 3 (the Lansing property) and Section 2 (the Anlex mining claim), when the government sold Section 3, Section 2 was "probably" not landlocked, because it would have been "prudent" to reserve a right to access Section 2.

On two occasions in 2013 and 2014, Clemmer observed trucks and mining equipment use the Road through Section 3 to access Anlex's mine. Approximately once a month since 2008, she had personally used the Road through Section 3 to get to the Brubaker-Mann quarries in Section 1. And, Brubaker-Mann moved equipment (loaders) using the Section 3 portion of the Road every week.[3] Clemmer did not have express permission from anyone to cross the Lansing portion of the Road, but she felt Brubaker-Mann had a right to do it because the company had been using it since at least 1978.

William Porch was a truck driver for D&K Concrete and hauled rock and sand. In 2015, he twice accessed the Anlex gravel pits by using the Road through Section 3. He did not have any problems driving his truck on that portion of the Road. On a scale of one to 10, one being the best, he rated the Road a three.

Harold Greenberg owned and drove sand and gravel trucks. He had been to Anlex's site six to eight times between October 2014 and April 2015. He had also used the Road through Section 3 to access Anlex's site. He had no safety concerns about driving this portion of the Road and felt it was an "average," "non-worrisome" haul road.

[3] It was safer to move the loaders across Section 3 than use the Section 1 portion of the Road. The loaders were parked near Brubaker-Mann's headquarters, and to get to Section 1 from there, the loaders would have to drive on the shoulder of the freeway. The Section 3 route did not require any freeway driving. There were no safety issues for Brubaker-Mann's trucks, however, and they used the Section 1 route to access the company's quarries.

B. *The Trial Court's Ruling on Remand*

On remand, the parties filed briefs and the court heard argument on how it should resolve the causes of action for a prescriptive easement and an equitable easement. In the process, Anlex abandoned its cause of action for a prescriptive easement. Brubaker-Mann argued against an equitable easement, but asserted that if the court were to grant one, it should order Anlex to pay half the costs of maintaining the Road and impose additional restrictions relating to the "purpose of [the] trip, time of use, speed, indemnity and insurance." In its reply brief, Anlex essentially conceded that it should share the costs of maintaining the Road, stating: "[Anlex] supposes that if the easement is granted that it will be responsible for payment of one half the costs of maintaining the road. This was [Anlex]'s position at the original trial and remains its position." And, at oral argument, Anlex's counsel indicated that Anlex had "taken the position all along" that it should bear half the costs of maintaining the Road.

The court issued a written ruling granting Anlex an equitable easement to use the Road across Parcel 03. (The parties agreed that Anlex, through Peterson, had an express easement across Parcel 09.) The court held that Anlex would be irreparably and disproportionately harmed without a way to access its mining claim. Lansing had denied Anlex access from the west side (Section 3) and, as of 2010, Brubaker-Mann had denied it access from the east side (Section 1). But Anlex's predecessors in interest had been using the Road from the east side for decades. And, Anlex already had an express easement to use half of the Road on the east side (Parcel 09). In contrast, an equitable

easement in favor of Anlex would not irreparably harm Brubaker-Mann. Also, Brubaker-Mann bore responsibility for the dispute, in that it purchased Parcel 03 with full knowledge that Anlex's predecessor in interest, Peterson, was using the Road there, and over the years Brubaker-Mann had granted others permission to use that portion of the Road. There was no evidence that allowing Anlex's predecessors, Collins, or the Whittier Gem and Mineral Society to use the Road had diminished the value of Parcel 03. Moreover, Brubaker-Mann's actions had unreasonably interfered with Anlex's use of its easement on Parcel 09 and had rendered the easement utterly useless. The court entered a new judgment for Anlex granting it an equitable easement across Parcel 03.[4] The judgment did not expressly address whether Anlex should share the costs of maintaining the Road.

III. DISCUSSION

A. *The Court Did Not Abuse Its Discretion in Granting Anlex an Equitable Easement*

Brubaker-Mann contends that the evidence does not support an equitable easement in favor of Anlex, mostly because there was no evidence of a hardship to Anlex without the easement. We disagree.

[4] On our own motion, we augment the record to include the judgment for Anlex, filed on February 14, 2018. (Cal. Rules of Court, rule 8.155(a)(1).) We note that Brubaker-Mann filed a premature notice of appeal on January 18, 2018, after the court had issued its written ruling but before entry of the judgment. We exercise our discretion to treat this premature notice of appeal as if it were "filed immediately after entry of judgment." (Cal. Rules of Court, rule 8.104(d)(2); *Village Nurseries v. Greenbaum* (2002) 101 Cal.App.4th 26, 36.)

"An easement is a restricted right to specific, limited, defineable use or activity upon another's property, which right must be less than the right of ownership." (*Mesnick v. Caton* (1986) 183 Cal.App.3d 1248, 1261, italics omitted.) "[E]quitable easements give the trespasser 'what is, in effect, the right of eminent domain by permitting him to occupy property owned by another.'" (*Shoen v. Zacarias* (2015) 237 Cal.App.4th 16, 20.) A trial court should "approach the issuance of equitable easements with '[a]n abundance of caution' [citation], and resolve all doubts against their issuance [citation]." (*Id*. at p. 21.)

The court should consider three factors in granting an equitable easement and grant the easement only where all three factors weigh in favor of it. (*Shoen v. Zacaria*, *supra*, 237 Cal.App.4th at p. 19.) First, "'[t]he court should consider the parties' conduct to determine who is responsible for the dispute.'" (*Tashakori v. Lakis* (2011) 196 Cal.App.4th 1003, 1009.) Has a willful act of the party seeking the easement—the trespasser or the encroacher—given rise to the need for the easement? (*Hinrichs*, *supra*, 11 Cal.App.5th at p. 522.) Or is the landowner—over whose property the easement is sought—in any way responsible for the situation? (*Linthicum v. Butterfield* (2009) 175 Cal.App.4th 259, 265.) In *Linthicum*, for instance, the court found that the landowner was responsible for the dispute because he had purchased his parcel "with full knowledge of the historical use of the roadway [at issue] and made a concerted effort to deprive the [trespassers] of the value and use of their properties," which they could not access without the equitable easement. (*Id.* at pp. 266.)

Second, the court should consider whether the landowner will suffer irreparable injury by having the easement on his or her property. (*Hinrichs, supra*, 11 Cal.App.5th at p. 522.) If the landowner will suffer irreparable injury, the court should not grant the equitable easement, "except, perhaps, where the rights of the public will be adversely affected." (*Linthicum v. Butterfield, supra*, 175 Cal.App.4th at p. 265.)

Third, the hardship to the trespasser without the easement must be greatly disproportionate to the hardship caused to the landowner, if the easement were granted. (*Hinrichs, supra*, 11 Cal.App.5th at p. 522.) This requirement of great disproportionality "precludes a more open-ended and free-floating inquiry into which party will make better use of the encroached-upon land, which values it more, and which will derive a greater benefit from its use." (*Shoen v. Zacarias, supra*, 237 Cal.App.4th at p. 21.)

"When reviewing a trial court's exercise of its equity powers to fashion an equitable easement, we will overturn the decision only if we find that the court abused its discretion." (*Tashakori v. Lakis, supra*, 196 Cal.App.4th at p. 1008.) "[W]e resolve all evidentiary conflicts in favor of the judgment and determine whether the court's decision '"falls within the permissible range of options set by the legal criteria."'" (*Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 771.) "In viewing the evidence, we look only to the evidence supporting the prevailing party. [Citation.] We discard evidence unfavorable to the prevailing party as not having sufficient verity to be accepted by the trier of fact. [Citation.] Where the trial court or jury has drawn reasonable inferences from the evidence, we have no power to draw different inferences, even though different

inferences may also be reasonable. [Citation.] The trier of fact is not required to believe even uncontradicted testimony." (*Hinrichs, supra,* 11 Cal.App.5th at pp. 524-525.)

In the present case, we have no doubt that the court acted within its discretion in granting Anlex an equitable easement. When it comes to the parties' conduct, Brubaker-Mann bears much of the responsibility for this dispute. It purchased Parcel 03 aware that Anlex's predecessors, Peterson and Calico Rock, had historically used the Road across Section 1 to access their mining claim. It expressly granted Peterson an easement across Parcel 09 when it owned only that half of the section. Brubaker-Mann itself had the permission of Parcel 03's prior owner to cross the Road. And after it acquired Parcel 03, Brubaker-Mann permitted Calico Rock to use the Road across that parcel, as well as Parcel 09 (by virtue of the express easement that passed to Peterson's successors). But after Anlex obtained the mining claim in 2009, Brubaker-Mann sought to impose terms on Anlex's use of the Road that it did not impose on these predecessors. There was no evidence that Brubaker-Mann had prohibited the predecessors' customers from coming on the Road, had dictated which employees of the predecessors could use the Road, or had the right to terminate the predecessors' access without cause and with only 30 days' notice. This was a deliberate interference with Anlex's use of its mining claim and its undisputed easement across Parcel 09. (*Linthicum v. Butterfield, supra,* 175 Cal.App.4th at p. 266.) There was no use for that easement unless Anlex could also cross Parcel 03. In contrast, Anlex did nothing willful to cause the need for the easement. Indeed, the court could have rationally inferred that Anlex reasonably relied on its predecessors'

historical access to the Road in Section 1 when it purchased the mining claim, especially given the express easement across the Parcel 09 half.

Moreover, the evidence showed no irreparable injury to Brubaker-Mann, should Anlex have an easement across Parcel 03. The Road has existed and has been used for decades. It is not as though Brubaker-Mann must create a new pathway through its property for Anlex. Brubaker-Mann has given several parties access to the Road over the years, including Peterson, Calico Rock, the county, and others who have mining claims in the area (the Whittier Gem and Mineral Society and Collins). This liberal granting of access suggests that Brubaker-Mann suffers no irreparable injury by allowing others to use the Road.

As to the third factor, the court correctly determined that the hardship to Anlex without the easement was greatly disproportionate to the hardship that Brubaker-Mann will suffer. The Road provides access to Anlex's mining claim, but only if Anlex has an easement to use the Road on either Brubaker-Mann's side or Lansing's side. In 2010, before filing this lawsuit, Anlex requested permission from Lansing to use the Road on Lansing's side, but Lansing did not grant it. Without access from one side or the other, Anlex's mining claim is inaccessible and thus worthless. In other words, as the court found in its written ruling, "[a] commercial interest in a mining claim necessarily requires the ability to haul product from the quarry to market. Absent a viable access road, Anlex will be irreparably harmed."

The hardship to Brubaker-Mann seems negligible, by comparison. It argues that increased traffic on the Road will increase its maintenance costs. In addition, it contends that it needs to control access to the Road to prevent illegal dumping of trash, vandalism, and theft of property. Neither of these arguments has merit. Anlex has indicated that it is perfectly willing to share maintenance costs for the Road (which we discuss more in the next subpart). As to illegal activity on the Road, this was the reason why Brubaker-Mann installed the gate in 1993—to control access and prevent the trash dumping, theft, and vandalism. But as the trial court pointed out in its ruling, "[k]eeping the general public off a private road by using gates and keys to cut down on traffic and vandalism is not inconsistent with a neighbor's right of way over said roadway." Nothing in the court's ruling requires Brubaker-Mann to remove the existing gate. It must simply give Anlex access through the gate, as it has done with the many other parties who have had access to the Road. The county, for example, has a key to the gate.

Brubaker-Mann also contends that there was no evidence of hardship to Anlex because Anlex is entitled to an easement over Lansing's property. It posits three different theories under which Anlex is purportedly entitled to an easement from Lansing— an easement by prescription, an easement by necessity, and an implied easement.[5] Relatedly, Brubaker-Mann contends that an equitable easement over its property is not ripe for adjudication until all three parties (Anlex, Brubaker-Mann, and Lansing) are

[5] Brubaker-Mann made these same arguments below, but the court did not expressly address them in its ruling.

before a court, and the court has determined what rights, if any, Anlex has to cross Lansing's property.

We are not persuaded by the ripeness argument. "The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion." (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.) Anlex was not asking the court to resolve an abstract difference of opinion or render an advisory opinion. The court's judgment has real-world and immediate implications for Anlex. Anlex wanted an easement across Parcel 03 to access its mining claim. Brubaker-Mann offered it a license agreement with terms that Anlex found unacceptable. This dispute is based on concrete facts concerning whether Anlex nevertheless has a right in equity to use the Road across Parcel 03.

We are also not persuaded by the arguments that Anlex is entitled to an easement across Lansing's property. The court could have properly rejected these arguments. A prescriptive easement requires "open and notorious adverse use of the land of another that is continuous and uninterrupted for the five-year statutory period." (*Hinrichs*, *supra*, 11 Cal.App.5th at p. 525.) There was no evidence that Anlex continuously used the Road across Lansing's property for five years. Clemmer twice observed trucks and mining equipment cross Lansing's property to Anlex's site, once in 2013 and once in 2014. Porch and Greenberg, who were not Anlex employees, crossed Lansing's property in

2014 and 2015 to access Anlex's site. Assuming that all of these uses could be attributed to Anlex, they would only establish use for three years, not five.

An easement by necessity may arise when the owner of two adjoining parcels conveys one and thereby landlocks the retained parcel. (*Murphy v. Burch* (2009) 46 Cal.4th 157, 163.) In such a case, the owner "may seek an implied reservation of a right-of-way of necessity over the conveyed property for the retained parcel's benefit." (*Ibid.*, italics omitted.) An easement by necessity requires both "a strict necessity for the claimed right-of-way," and "common ownership at the time of the conveyance giving rise to the necessity." (*Ibid.*) Conveyances involving the federal government as the common owner "typically do not give rise to implied reservations of easements . . . in conveyed land." (*Id.* at p. 165, italics omitted.) There are three reasons for this: (1) a land patent issued by the federal government "'"is the highest evidence of title, something upon which the holder can rely for peace and security,"'" and mindful of this circumstance, courts are reluctant "to interfere with the certainty and predictability" of the land patent (*ibid.*);[6] (2) the federal government owned almost all the land at one time, and "the common-ownership requirement would be meaningless unless stronger showings are required for implying an easement by necessity in cases tracing back to patents" (*ibid.*); and (3) strict necessity does not exist because the federal government "can exercise the power of eminent domain to obtain any and all reasonable rights-of-way" (*ibid.*). Here,

[6] As used here, a land patent "refers to a government grant that confers on an individual fee simple title to public lands, or the official document of such a grant." (*Murphy v. Burch*, *supra*, 46 Cal.4th at p. 162, fn. 1.)

the federal government still owns the land where Anlex has its mining claim (Section 2), and it owned Lansing's adjacent property (Section 3) until 1999. Even assuming that Section 2 became landlocked by the 1999 conveyance of Section 3, given that this conveyance involved the federal government, it did not give rise to an easement by necessity over Section 3.

Brubaker-Mann bases its last theory of an implied easement also on the federal government's conveyance of Section 3. Among other requirements, an easement will be implied when the owner of property transfers a portion of that property to another, and, at the time of the conveyance, the grantor's "prior existing use of the property was of a nature that the parties must have intended or believed that the use would continue." (*Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 141.) The prior existing use "must either have been known to the grantor and the grantee, or have been so obviously and apparently permanent that the parties should have known of the use."[7] (*Tusher v. Gabrielsen*, *supra*, 68 Cal.App.4th at p. 141.) "'The purpose of the doctrine of implied easements is to give effect to the actual intent of the parties as shown by all the facts and circumstances.'" (*Ibid.*) Courts should not imply the easement absent clear evidence that the parties intended it. (*Id.* at pp. 141-142.)

[7] These requirements are codified in Civil Code section 1104, which states: "A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed." (See also *Tusher v. Gabrielsen*, *supra*, 68 Cal.App.4th at p. 141, fn. 12.)

Brubaker-Mann contends that when the federal government owned Section 3, the Code of Federal Regulations entitled Anlex to cross the government land to access its mining claim. (See 36 C.F.R. §§ 228.2, 228.3(a), (b), 228.12 [a person conducting operations under the United States mining laws "is entitled to access in connection with operations"].) When the government transferred Section 3 into private hands, Brubaker-Mann claims that an easement in favor of Anlex arose by implication. But regardless of whether Anlex had a right to cross Section 3 during the government's ownership of it, there is no evidence that Anlex actually did so. The evidence showed, instead, that Anlex did *not* engage in mining activity after it acquired the mining claim in 1999. In short, the record does not show that the government or Anlex, as the government's assignee, was so obviously and permanently using the Road across Section 3, such that the government and the grantee of Section 3 must have intended to imply an easement.

Ultimately, the court did not abuse its discretion in granting Anlex an equitable easement across Parcel 03. The evidence showed that Brubaker-Mann bears much of the responsibility for this dispute, it will suffer no irreparable injury from the easement, and the hardship to Anlex without the easement was greatly disproportionate. Moreover, Brubaker-Mann's arguments that Anlex is entitled to an easement across Lansing's property lack merit, and they fail to convince us that Anlex will suffer no hardship without the Parcel 03 easement.

B. *The Judgment Should Be Modified So That Anlex Shares Brubaker-Mann's Reasonable Costs of Maintaining the Road*

Brubaker-Mann contends that, if we affirm the grant of an equitable easement, we should remand so that the court may compensate it for the easement. It argues that, at a bare minimum, Anlex should pay half the costs of maintaining the Road. We agree but see no need for a remand on the issue.

"The doctrine of equitable easements allows compensation to the servient property owner," over whose property the easement is granted. (*Hinrichs*, *supra*, 11 Cal.App.5th at p. 524; *Linthicum v. Butterfield*, *supra*, 175 Cal.App.4th at p. 268 [when the court creates an equitable easement, the servient property owner "is ordinarily entitled to damages."].) Although Anlex acknowledged below that it should share half of Brubaker-Mann's costs for maintaining the Road, the trial court's ruling and the judgment did not address this issue. The court entered the judgment on Judicial Council form JUD-100, with an attached page (Attachment 7) stating simply: "1. Plaintiff has an equitable easement across the roadway at issue over Parcel 03 of Section 1, Township 9 North, Range West, SBBM, pursuant to the establishment of an equitable easement." Given that the law supports compensation to Brubaker-Mann, and most importantly, the parties agree on the sharing of half the costs, we shall modify the judgment so that Anlex must pay half the reasonable costs of maintaining the Road.

C. *Another Remand to Explore Restrictions on Anlex's Use of the Road Is Not Appropriate*

Brubaker-Mann also contends that we should remand for the court to explore restrictions on Anlex's use of the Road, such as time of use, speed, purpose of the trip, and insurance. We decline to do so.

"'The rights and duties between the owner of an easement and the owner of the servient tenement . . . are correlative. Each is required to respect the rights of the other. Neither party can conduct activities or place obstructions on the property that unreasonably interfere with the other party's use of the property. In this respect, there are no absolute rules of conduct. The responsibility of each party to the other and the "reasonableness" of use of the property depends on the nature of the easement, its method of creation, and the facts and circumstances surrounding the transaction.'" (*Dolnikov v. Ekizian* (2013) 222 Cal.App.4th 419, 428-429.)

After we remanded this case the first time, Brubaker-Mann had its chance to make a case that the court should impose restrictions on Anlex's use of the Road. In its postremand briefing, Brubaker-Mann simply stated, in a conclusory manner, that the court should impose its desired restrictions as a condition of granting any equitable easement. It made no attempt to show how the restrictions were reasonable, with citation to legal authorities and developed argument. On appeal, Brubaker-Mann proceeds in much the same manner. It simply asks us to remand on this issue, without any attempt to show how the court erred in failing to impose the restrictions in the first place, or why

they would be reasonable under the law. "When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) For this reason, we decline to remand on the issue of restricting Anlex's use.

IV. DISPOSITION

The judgment is modified to add the following sentence to paragraph 1 on Attachment 7: "Plaintiff shall pay half of Defendant's reasonable costs of maintaining the roadway at issue." As so modified, the judgment is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.